

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

**U.S. Bank Trust National Association, not in
its individual capacity, but solely as trustee
of Citigroup Mortgage Loan Trust 2019-E**

Plaintiff

vs.

Warren G. Cousins Jr. and Kristi Cousins

Defendants

**LVNV Funding, LLC,
U.S. Bank National Association, Not in its
individual capacity, but solely as Trustee of
NRZ Recovery Trust,
Helen Cousins**

Parties-In-Interest

CIVIL ACTION NO:

COMPLAINT

RE:

317 Tatnic Road, Wells, ME 04090

Mortgage:

October 19, 2006

Book 14988, Page 0146

York County Registry of Deeds

NOW COMES the Plaintiff, U.S. Bank Trust National Association, not in its individual capacity, but solely as trustee of Citigroup Mortgage Loan Trust 2019-E, by and through its attorneys, Doonan, Graves & Longoria, LLC, and hereby complains against the Defendants, Warren G. Cousins Jr and Kristi Cousins, as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action pursuant 28 U.S.C. § 1332(a)(1) (Diversity) because the Plaintiff and Defendants are citizens of different states and the matter in controversy exceeds the sum or value of seventy-five thousand and 00/100 (\$75,000.00) dollars, exclusive of interest and costs. Any Court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested

party seeking such declaration, whether or not further relief is or could be sought under 28 U.S.C. § 2201.

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(a)(1) because the object of this litigation is a Loan Agreement executed under seal currently owned and held by U.S. Bank Trust National Association, not in its individual capacity, but solely as trustee of Citigroup Mortgage Loan Trust 2019-E, in which the Defendants, Warren G. Cousins Jr and Kristi Cousins, are the obligor and the total amount owed under the terms of the Loan Agreement is Five Hundred Fifty-Seven Thousand Five Hundred Ninety-Two and 12/100 (\$557,592.12) Dollars, plus attorney fees and costs associated with the instant action; thus, the amount in controversy exceeds the jurisdictional threshold of seventy-five thousand (\$75,000.00) dollars.
3. Venue is properly exercised pursuant to 28 U.S.C. §1391(b)(2) insofar as all or a substantial portion of the events that give rise to the Plaintiff's claims transpired in Maine and the property is located in Maine.

PARTIES

4. U.S. Bank Trust National Association, not in its individual capacity, but solely as trustee of Citigroup Mortgage Loan Trust 2019-E is a National Association with its principal place of business located at 425 Walnut Street Cincinnati, OH. 45202.
5. The Defendant, Warren G. Cousins Jr, is a resident of Wells, County of York and State of Maine.
6. The Defendant, Kristi Cousins, is a resident of Wells, County of York and State of Maine.
7. The Party-in-Interest, LVNV Funding, LLC, is located at, W. Commercial Street, P.O. Box 9715-PMB 815, Portland, ME 04104.

8. The Party-in-Interest, U.S. Bank National Association, Not on its individual capacity, but solely as Trustee of NRZ Recovery Trust, is located at 75 Beattie Place, Suite 300, Greenville, SC 29601.
9. The Party-in-interest, Helen Cousins, is located at 317 Tatnic Road, Wells, ME 04090.

FACTS

10. On July 1, 2004, by virtue of a Warranty Deed from Warren G. Cousins, Jr., which is recorded in the York County Registry of Deeds in **Book 14154, Page 549**, the property situated at 317 Tatnic Road, City/Town of Wells, County of York, and State of Maine, was conveyed to Warren G. Cousins, Jr and Kristy Cousins, being more particularly described by the attached legal description. *See* Exhibit A (a true and correct copy of the legal description is attached hereto and incorporated herein).
11. On October 19, 2006, Defendants, Warren G. Cousins Jr and Kristi Cousins, executed and delivered to Household Finance Corporation II a certain Loan Agreement in the amount of \$280,550.56. *See* Exhibit B (a true and correct copy of the Loan Agreement is attached hereto and incorporated herein).
12. To secure said Loan Agreement, on October 19, 2006, Defendants, Warren G. Cousins Jr. and Kristi Cousins, executed a Mortgage Deed in favor of Household Finance Corporation II, securing the property located at 317 Tatnic Road, Wells, ME 04090 which Mortgage Deed is recorded in the York County Registry of Deeds in **Book 14988, Page 0146**. *See* Exhibit C (a true and correct copy of the Mortgage is attached hereto and incorporated herein).
13. The Mortgage was then assigned to U.S. Bank Trust, N.A., as Trustee for LSF8 Master Participation Trust by virtue of an Assignment of Mortgage dated March 12, 2014 and recorded in the York County Registry of Deeds in **Book 16798, Page 441**. *See* Exhibit D (a

true and correct copy of the Assignment of Mortgage is attached hereto and incorporated herein).

14. The Mortgage was then assigned to Citibank, N.A., as trustee for CMLTI Asset Trust by virtue of an Assignment of Mortgage dated August 26, 2019 and recorded in the York County Registry of Deeds in **Book 18044, Page 529**. *See* Exhibit E (a true and correct copy of the Assignment of Mortgage is attached hereto and incorporated herein).
15. The Mortgage was then assigned to Citigroup Mortgage Loan Trust 2019-E by virtue of an Assignment of Mortgage dated February 12, 2020 and recorded in the York County Registry of Deeds in **Book 18186, Page 16**. *See* Exhibit F (a true and correct copy of the Assignment of Mortgage is attached hereto and incorporated herein).
16. The Mortgage was then assigned to U.S. Bank Trust National Association, not in its individual capacity, but solely as trustee of Citigroup Mortgage Loan Trust 2019-E by virtue of an Assignment of Mortgage dated March 28, 2022 and recorded in the York County Registry of Deeds in **Book 19003, Page 707**. *See* Exhibit G (a true and correct copy of the Assignment of Mortgage is attached hereto and incorporated herein).
17. On May 10, 2022, the Defendants, Warren G. Cousins Jr. and Kristi Cousins, were sent a Notice of Mortgagor's Right to Cure, as evidenced by the Certified Mail Tracking Number (herein after referred to as the "Demand Letter"). *See* Exhibit H (a true and correct copy of the Demand Letter is attached hereto and incorporated herein).
18. The Demand Letter informed the Defendants, Warren G. Cousins Jr. and Kristi Cousins, of the payment due date, the total amount necessary to cure the default, and the deadline by which the default must be cured, which was thirty-five (35) days from receipt of the Demand Letter. *See* Exhibit H.

19. The Defendants, Warren G. Cousins Jr. and Kristi Cousins, failed to cure the default prior to the expiration of the Demand Letter.
20. The Plaintiff, U.S. Bank Trust National Association, not in its individual capacity, but solely as trustee of Citigroup Mortgage Loan Trust 2019-E, is the present holder of the Loan Agreement pursuant to endorsement by the previous holder (if applicable), payment of value and physical possession of the Loan Agreement in conformity with 11 M.R.S. § 3-1201, et seq., and *Simansky v. Clark*, 147 A. 205, 128 Me. 280 (1929).
21. The Plaintiff, U.S. Bank Trust National Association, not in its individual capacity, but solely as trustee of Citigroup Mortgage Loan Trust 2019-E, is the lawful holder and owner of the Loan Agreement and Mortgage.
22. The Plaintiff, U.S. Bank Trust National Association, not in its individual capacity, but solely as trustee of Citigroup Mortgage Loan Trust 2019-E, hereby certifies that all steps mandated by law to provide notice to the mortgagor pursuant to 14 M.R.S.A. § 6111 and/or Loan Agreement and Mortgage were strictly performed.
23. U.S. Bank National Association, Not in its individual capacity, but solely as Trustee of NRZ Recovery Trust is a Party-in-Interest pursuant to a Mortgage, originally given to Household Finance Corporation II in the amount of \$26,338.64 dated July 25, 2007, and recorded in the York County Registry of Deeds in Book 15231, Page 383 and is in second position behind Plaintiff's Mortgage. Said Mortgage was assigned to U.S. Bank National Association, Not in its individual capacity, but solely as Trustee of NRZ Recovery Trust by virtue of an Assignment of Mortgage dated December 1, 2021 and recorded in the York County Registry of Deeds in Book 18888, Page 713.

24. LVNV Funding, LLC is a Party-in-Interest pursuant to a Writ of Execution in the amount of \$1,510.35 dated July 12, 2010, and recorded in the York County Registry of Deeds in **Book 15918, Page 918** and is in third position behind Plaintiff's Mortgage.
25. Helen Cousins is a Party-in-interest pursuant to the recording of two Memorandum of Leases at Book 13349, Page 247 and Book 14397, Page 117 which by its terms is "subject and subordinate at all times to the lien of any existing mortgages and of any and all mortgages which may hereafter be made a lien on the premises. This clause shall be self-operative and no further instrument of subordination shall be required by any mortgagee."
26. The total debt owed under the Loan Agreement and Mortgage as of September 20, 2022, is Five Hundred Fifty-Seven Thousand Five Hundred Ninety-Two and 12/100 (\$557,592.12) Dollars, which includes:

Description	Amount
Principal Balance	\$530,751.60
Interest	\$16,694.98
Unpaid Late Charges	\$130.00
Escrow Advance	\$6,622.54
Recoverable Corporate Advance Balance	\$3,393.00
Grand Total	\$557,592.12

27. Upon information and belief, the Defendants, Warren G. Cousins Jr. and Kristi Cousins, are presently in possession of the subject property originally secured by the Mortgage.

COUNT I – FORECLOSURE AND SALE

28. The Plaintiff, U.S. Bank Trust National Association, not in its individual capacity, but solely as trustee of Citigroup Mortgage Loan Trust 2019-E, repeats and re-alleges paragraphs 1 through 27 as if fully set forth herein.

29. This is an action for foreclosure and sale respecting a real estate related Mortgage and title located at 317 Tatnic Road, Wells, County of York, and State of Maine. *See* Exhibit A.
30. The Plaintiff, U.S. Bank Trust National Association, not in its individual capacity, but solely as trustee of Citigroup Mortgage Loan Trust 2019-E, is the holder of the Loan Agreement referenced in Paragraph 11 pursuant to endorsement by the previous holder (if applicable) and physical possession of the aforesaid Loan Agreement in conformity with Title 11, section 3-1201, et seq. of the Maine Revised Statutes and *Simansky v. Clark*, 147 A. 205, 128 Me. 280 (1929). As such, Plaintiff, U.S. Bank Trust National Association, not in its individual capacity, but solely as trustee of Citigroup Mortgage Loan Trust 2019-E, has the right to foreclosure and sale upon the subject property.
31. The Plaintiff, U.S. Bank Trust National Association, not in its individual capacity, but solely as trustee of Citigroup Mortgage Loan Trust 2019-E, is the current owner and investor of the aforesaid Mortgage and Loan Agreement.
32. The Defendants, Warren G. Cousins Jr. and Kristi Cousins, are presently in default on said Mortgage and Loan Agreement, having failed to make the monthly payment due August 24, 2021, and all subsequent payments, and, therefore, have breached the condition of the aforesaid Mortgage and Loan Agreement.
33. The total debt owed under the Loan Agreement and Mortgage as of September 20, 2022 is Five Hundred Fifty-Seven Thousand Five Hundred Ninety-Two and 12/100 (\$557,592.12) Dollars.
34. The record established through the York County Registry of Deeds indicates that there are no public utility easements recorded subsequent to the Mortgage and prior to the commencement of these proceedings affecting the mortgaged premises at issue herein.

35. By virtue of the Defendants, Warren G. Cousins Jr. and Kristi Cousins', breach of condition, the Plaintiff hereby demands a foreclosure and sale on said real estate.
36. Notice in conformity with 14 M.R.S.A. § 6111 and/or Loan Agreement and Mortgage was sent to the Defendants, Warren G. Cousins Jr. and Kristi Cousins, on May 10, 2022, evidenced by the Certified Mail Tracking Number. *See* Exhibit H.
37. The Defendants, Warren G. Cousins Jr and Kristi Cousins, are not in the Military as evidenced by the attached Exhibit I.
38. If any Defendant has received a Bankruptcy Discharge of this Debt, the Court should enter an Order finding that this action does not seek any personal liability on the part of that Defendant, but only seeks *in rem* judgment against the property.

COUNT II – BREACH OF LOAN AGREEMENT

39. The Plaintiff, U.S. Bank Trust National Association, not in its individual capacity, but solely as trustee of Citigroup Mortgage Loan Trust 2019-E, repeats and re-alleges paragraphs 1 through 39 as if fully set forth herein.
40. On October 19, 2006, the Defendants, Warren G. Cousins Jr and Kristi Cousins, executed and delivered to Household Finance Corporation II a certain Loan Agreement in the amount of \$280,550.56. *See* Exhibit B.
41. The Defendants, Warren G. Cousins Jr and Kristi Cousins, are in default for failure to properly tender the July 24, 2009 payment and all subsequent payments. *See* Exhibit H.
42. The Plaintiff, U.S. Bank Trust National Association, not in its individual capacity, but solely as trustee of Citigroup Mortgage Loan Trust 2019-E, is the proper holder of the Loan Agreement and is entitled to enforce the terms and conditions of the Loan Agreement due to its breach by the Defendants, Warren G. Cousins Jr and Kristi Cousins.

43. The Defendants, Warren G. Cousins Jr and Kristi Cousins, having failed to comply with the terms of the Loan Agreement and Mortgage, are in breach of both the Loan Agreement and the Mortgage.
44. The Defendants, Warren G. Cousins Jr. and Kristi Cousins', breach is knowing, willful, and continuing.
45. The Defendants, Warren G. Cousins Jr. and Kristi Cousins', breach has caused Plaintiff, U.S. Bank Trust National Association, not in its individual capacity, but solely as trustee of Citigroup Mortgage Loan Trust 2019-E, to suffer actual damages, including, but not limited to money lent, interest, expectancy damages, as well as attorney's fees and costs.
46. The total debt owed under the Loan Agreement and Mortgage as of September 20, 2022, if no payments are made, is Five Hundred Fifty-Seven Thousand Five Hundred Ninety-Two and 12/100 (\$557,592.12) Dollars.
47. Injustice can only be avoided by awarding damages for the total amount owed under the Loan Agreement including interest, plus costs and expenses, including attorney fees.
48. If any Defendant has received a Bankruptcy Discharge of this Debt, the Court should enter an Order finding that this action does not seek any personal liability on the part of that Defendant, but only seeks *in rem* judgment against the property.

COUNT III – BREACH OF CONTRACT, MONEY HAD AND RECEIVED

49. The Plaintiff, U.S. Bank Trust National Association, not in its individual capacity, but solely as trustee of Citigroup Mortgage Loan Trust 2019-E, repeats and re-alleges paragraphs 1 through 49 as if fully set forth herein.

50. By executing, under seal, and delivering the Loan Agreement, the Defendants, Warren G. Cousins Jr. and Kristi Cousins, entered into a written contract with Household Finance Corporation II who agreed to loan the amount of \$280,550.56 to the Defendants. *See* Exhibit B.
51. As part of this contract and transaction, the Defendants, Warren G. Cousins Jr. and Kristi Cousins, executed the Mortgage to secure the Loan Agreement and the subject property. *See* Exhibit C.
52. The Plaintiff, U.S. Bank Trust National Association, not in its individual capacity, but solely as trustee of Citigroup Mortgage Loan Trust 2019-E, is the proper holder of the Loan Agreement and successor-in-interest to Household Finance Corporation II, and has performed its obligations under the Loan Agreement and Mortgage.
53. The Defendants, Warren G. Cousins Jr and Kristi Cousins, breached the terms of the Loan Agreement and Mortgage by failing to properly tender the August 24, 2021 payment and all subsequent payments. *See* Exhibit H.
54. The Plaintiff, U.S. Bank Trust National Association, not in its individual capacity, but solely as trustee of Citigroup Mortgage Loan Trust 2019-E, is the proper holder of the Loan Agreement, and is entitled to enforce the terms and conditions of the Loan Agreement due to its breach by the Defendants, Warren G. Cousins Jr. and Kristi Cousins.
55. The Defendants, Warren G. Cousins Jr. and Kristi Cousins, having failed to comply with the terms of the Loan Agreement and Mortgage, are in breach of contract.

56. The Defendants, Warren G. Cousins Jr. and Kristi Cousins, are indebted to U.S. Bank Trust National Association, not in its individual capacity, but solely as trustee of Citigroup Mortgage Loan Trust 2019-E in the sum of Five Hundred Fifty-Seven Thousand Five Hundred Ninety-Two and 12/100 (\$557,592.12) Dollars, for money lent by the Plaintiff, U.S. Bank Trust National Association, not in its individual capacity, but solely as trustee of Citigroup Mortgage Loan Trust 2019-E, to the Defendants.
57. Defendants, Warren G. Cousins Jr and Kristi Cousins', breach is knowing, willful, and continuing.
58. Defendants, Warren G. Cousins Jr and Kristi Cousins', breach has caused Plaintiff, U.S. Bank Trust National Association, not in its individual capacity, but solely as trustee of Citigroup Mortgage Loan Trust 2019-E, to suffer actual damages, including, but not limited to money lent, interest, expectancy damages, as well as attorney's fees and costs.
59. The total debt owed under the Loan Agreement and Mortgage as of September 20, 2022, if no payments are made, is Five Hundred Fifty-Seven Thousand Five Hundred Ninety-Two and 12/100 (\$557,592.12) Dollars.
60. Injustice can only be avoided by awarding damages for the total amount owed under the Loan Agreement and Mortgage, and for money had and received, including interest, plus costs and expenses, including attorney fees.
61. If any Defendant has received a Bankruptcy Discharge of this Debt, the Court should enter an Order finding that this action does not seek any personal liability on the part of that Defendant but only seeks *in rem* judgment against the property.

COUNT IV –UNJUST ENRICHMENT

62. The Plaintiff, U.S. Bank Trust National Association, not in its individual capacity, but solely as trustee of Citigroup Mortgage Loan Trust 2019-E, repeats and re-alleges paragraphs 1 through 61 as if fully set forth herein.

63. Household Finance Corporation II, predecessor-in-interest to U.S. Bank Trust National Association, not in its individual capacity, but solely as trustee of Citigroup Mortgage Loan Trust 2019-E, loaned the Defendants, Warren G. Cousins Jr and Kristi Cousins, \$280,550.56. *See Exhibit B.*

64. The Defendants, Warren G. Cousins Jr. and Kristi Cousins, have failed to repay the loan obligation.

65. As a result, the Defendants, Warren G. Cousins Jr. and Kristi Cousins, have been unjustly enriched to the detriment of the Plaintiff, U.S. Bank Trust National Association, not in its individual capacity, but solely as trustee of Citigroup Mortgage Loan Trust 2019-E as successor-in-interest to Household Finance Corporation II by having received the aforesaid benefits and money and not repaying said benefits and money.

66. As such, the Plaintiff, U.S. Bank Trust National Association, not in its individual capacity, but solely as trustee of Citigroup Mortgage Loan Trust 2019-E, is entitled to relief.

67. If any Defendant has received a Bankruptcy Discharge of this Debt, the Court should enter an Order finding that this action does not seek any personal liability on the part of that Defendant, but only seeks *in rem* judgment against the property.

PRAYERS FOR RELIEF

WHEREFORE, the Plaintiff, U.S. Bank Trust National Association, not in its individual capacity, but solely as trustee of Citigroup Mortgage Loan Trust 2019-E, prays this Honorable Court:

a) Issue a judgment of foreclosure and sale in conformity with Title 14 § 6322;

- b) Grant possession to the Plaintiff, U.S. Bank Trust National Association, not in its individual capacity, but solely as trustee of Citigroup Mortgage Loan Trust 2019-E, upon the expiration of the period of redemption;
- c) Find that the Defendants, Warren G. Cousins Jr. and Kristi Cousins, are in breach of the Loan Agreement by failing to make payment due as of July 24, 2009, and all subsequent payments;
- d) Find that the Defendants, Warren G. Cousins Jr. and Kristi Cousins, are in breach of the Mortgage by failing to make payment due as of July 24, 2009, and all subsequent payments;
- e) Find that the Defendants, Warren G. Cousins Jr. and Kristi Cousins, entered into a contract for a sum certain in exchange for a security interest in the subject property;
- f) Find that the Defendants, Warren G. Cousins Jr. and Kristi Cousins, are in breach of contract by failing to comply with the terms and conditions of the Loan Agreement and Mortgage by failing to make the payment due July 24, 2009 and all subsequent payments;
- g) Find that the Plaintiff, U.S. Bank Trust National Association, not in its individual capacity, but solely as trustee of Citigroup Mortgage Loan Trust 2019-E, is entitled to enforce the terms and conditions of the Loan Agreement and Mortgage;
- h) Find that by virtue of the money retained by the Defendants, Warren G. Cousins Jr. and Kristi Cousins have been unjustly enriched at the Plaintiff's expense;
- i) Find that such unjust enrichment entitles the Plaintiff, U.S. Bank Trust National Association, not in its individual capacity, but solely as trustee of Citigroup Mortgage Loan Trust 2019-E, to restitution;

- j) Find that the Defendants, Warren G. Cousins Jr. and Kristi Cousins, are liable to the Plaintiff, U.S. Bank Trust National Association, not in its individual capacity, but solely as trustee of Citigroup Mortgage Loan Trust 2019-E, for money had and received;
- k) Find that the Defendants, Warren G. Cousins Jr. and Kristi Cousins, have appreciated and retained the benefit of the Mortgage and the subject property;
- l) Find that it would be inequitable for the Defendants, Warren G. Cousins Jr. and Kristi Cousins, to continue to appreciate and retain the benefit of the Mortgage, Loan Agreement and subject property without recompensing the appropriate value;
- m) Find that the Plaintiff, U.S. Bank Trust National Association, not in its individual capacity, but solely as trustee of Citigroup Mortgage Loan Trust 2019-E, is entitled to restitution for this benefit from the Defendants, Warren G. Cousins Jr. and Kristi Cousins;
- n) Determine the amount due on said Mortgage and Loan Agreement, including principal, interest, reasonable attorney's fees and court costs;
- o) Additionally, issue a money judgment against the Defendants, Warren G. Cousins Jr. and Kristi Cousins, and in favor of the Plaintiff, U.S. Bank Trust National Association, not in its individual capacity, but solely as trustee of Citigroup Mortgage Loan Trust 2019-E, in the amount of Five Hundred Fifty-Seven Thousand Five Hundred Ninety-Two and 12/100 (\$557,592.12 Dollars, the total debt owed under the Loan Agreement plus interest and costs including attorney's fees and costs (If any Defendant has received a Bankruptcy Discharge of this Debt, the Court should enter an Order finding that this action does not seek any personal liability on the part of that Defendant, but only seeks *in rem* judgment against the property));

- p) Find that the interest (if any) of Helen Cousins is subordinate to, and subject to the subject mortgage and a foreclosure and sale of the subject mortgage will end any interest Helen Cousins has in the subject property;
- q) For such other and further relief as this Honorable Court deems just and equitable.

Respectfully Submitted,
U.S. Bank Trust National Association, not in
its individual capacity, but solely as trustee of
Citigroup Mortgage Loan Trust 2019-E,
By its attorneys,

Dated: October 21, 2022

/s/Reneau J. Longoria, Esq.
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